

**REMARKS**

**I. INTRODUCTION**

Claims 1, 5, 21, 34, 47, and 52 have been amended. Support for the amendments is found at least in paragraphs [0037] and [0038] of the specification. No new matter has been added. Thus, claims 1, 2, 4-7 and 10-68 remain pending in this application. It is respectfully submitted that based on the following remarks, all of the presently pending claims are in condition for allowance.

**II. THE 35 U.S.C. § 112 REJECTIONS SHOULD BE WITHDRAWN**

Claims 34-51 stand rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention.

The Examiner appears to be saying in this rejection that a claim to a “computer system” must recite in its body elements that the Examiner believes are indispensable to any “computer system” claim. Thus, the Examiner faults the claims for omitting such stock computer hardware terms as “processor,” “memory,” “peripheral devices,” etc. Until now Applicants had been unaware that the Patent Office imposes on computer system claims such a stringent requirement. In fact, so skeptical are the Applicants of this requirement that they respectfully request the Examiner to provide a specific citation to an unambiguous authority, whether it be statute, rule, or precedent, that deems “computer system” claims indefinite unless they recite these familiar terms. Applicants understand that these terms may provide the Examiner with a comforting familiarity that facilitates his examination of the claims, but what consoles the Examiner should not, on that basis alone, serve as a mandate for the Applicants. Rather, Applicants are entitled to be the lexicographers of their own claims; that means that, within the bounds of reason, they get to select the words that describe their invention. The deviation from a different lexicography subjectively conceived and preferred by the Examiner ought not be the basis for rejecting the claims. Moreover, the claims that have been rejected do nothing more than employ a statutorily

approved way of claiming apparatus claims. These claims are drafted as means-plus-function claims; means-plus-function claims are specifically authorized by 35 U.S.C. § 112, ¶6. Therefore, these claims are definite and should not be rejected

### **III. THE 35 U.S.C. § 101 REJECTIONS SHOULD BE WITHDRAWN**

Claims 34-51 stand rejected under 35 U.S.C. § 101. Apparently, the Examiner has made this rejection on the basis that these claims are directed to nothing other than “software per se.” The Federal Circuit has recently rejected this “software per se” argument in *In re Bilski*, \_\_\_ F.3d \_\_\_, 2008 WL 4757110, 88 USPQ2d (BNA) 1385 (Fed. Cir. Oct. 30, 2008). In footnote 23, the Federal Circuit states “although invited to do so by several amici, we decline to adopt a broad exclusion over software or any other such category of subject matter beyond the exclusion of claims drawn to fundamental principles set forth by the Supreme Court.” Thus, the categorical exclusion of software that appears to be the basis for this rejection has been rejected by the Federal Circuit. Accordingly, withdrawal of this rejection is requested.

### **IV. THE 35 U.S.C. § 103(a) REJECTIONS SHOULD BE WITHDRAWN**

Claims 1, 2, 4-7 and 10-68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,136,709 to Shirakabe et al. (hereinafter “Shirakabe”) in view of U.S. Patent No. 5,778,226 to Adams et al. (hereinafter “Adams”).

Applicants have amended claim 1 to recite “wherein the insulating of the application code allows the application code to perform a function by executing a routine that is standard to the application code instead of by using a routine that pertains to the running operating system kernel.” The advantage of this feature is summarized at paragraph [0037], which states:

As discussed above, environment library 112 includes one or more routines for insulating application code 102 from the operating system environment and implementing a uniform execution environment. That is, instead of depending on a changeable and specialized operating system interface, the program can use standard “C” interfaces--or alternatively, any standard

application programming interface. For example, in the current embodiment of the invention, instead of using a Linux kernel "sys\_open" operation applied to some terminal device so that the program can output data, the program can simply use the standard "printf" routine. Instead of using some OS dependent routine for generating a thread, the program can use "pthread\_create"--a POSIX standard function.

In contrast to claim 1, Shirakabe requires an application code to use a non-standard routine that is specific to the operating system environment of the kernel to which it is linked. Specifically, linkage editor 7 links kernel 3 and driver 5, and as a result of this linkage, driver 5 calls for the execution of a routine in the kernel 3. Specifically, Shirakabe describes a kernel routine KSUBm. The linkage editor 7 creates a load module 26 corresponding to the driver 5 and a load module 4 corresponding to the kernel. The purpose is so that "by use of the load module 26 containing the driver 6 thus separately generated, the routine in the load module 4 of the kernel 3 can be called." Column 6, lines 27-30. Thus, no insulation of the kind recited in the claim occurs in Shirakabe; indeed, quite the opposite occurs since the driver is required by the linkage editor 7 to call the routine of the kernel. As stated in the Background of the present specification, this absence of insulation from the operating system environment is disadvantageous because it requires the application code to depend on OS dependent routines, which is more complex, time-consuming, and error-prone than merely using the routines standard to the application code.

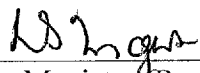
As for Adams, it too shows the same type of non-insulating linkage between driver and kernel that was shown to be deficient in Shirakabe. Specifically, as seen in Figure 1, interface 4 provides a linkage between device driver description tables 8 and kernel 1 that does not insulate driver from the operating system environment in the manner recited in the claim. Accordingly, withdrawal of the rejection of claim 1 and its dependent claims is requested. Since the other independent claims have been amended in a similar manner, withdrawal of the rejection of these claims (and their dependent claims) is also requested.

**CONCLUSION**

In view of the above remarks, it is respectfully submitted that all the presently pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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